

REMARKS/ARGUMENTS

Overview

The present application includes claims 1-22. With this amendment Applicants have amended claims 1, 17 and 20. As such, claims 1-25 are pending in this application with claims 2, 5-7, and 9-11 being withdrawn.

The Applicants thanks the Examiner for the telephonic interview of December 21, 2007. The remarks and amendments submitted herein reflect or expand on the discussions of the interview.

Applicants further acknowledge the interview summary provided by the Examiner dated December 27, 2007. As discussed during the interview, Applicants have amended the independent claims to state "without manual intervention" where appropriate. Applicants appreciate the Examiner's indication that the lack of a need of manual adjustment of the device overcomes the prior art of record.

Claim Rejections under 35 U.S.C. 112

Applicants have amended claim 25 to depend from claim 24. Removal of the rejection of claim 25 is respectfully requested.

Claim Rejections under 35 U.S.C. 103

The Examiner rejected claims 1, 3, 4, 8, 23, and 24 under 35 U.S.C. 103(a) as being unpatentable over US Patent 4,667,660 to Eingorn ("Eingorn"). The rejected claims include independent claim 1 from which the remaining claims depend.

Claim 1

Applicant submits that Eingorn, does not disclose, teach, or suggest the apparatus for limiting the movement of the head of a person of amended independent claim 1 comprising "a link system including a plurality of links; a first plurality of constraints rigidly coupled to a first link of the link system and adapted to engage the left half of the head of the person; and a second plurality of constraints rigidly coupled to a second link of the link system and adapted to engage the right half of the head of the person; wherein the link system is ... configured to simultaneously adapt to changes in the geometry of the head without manual intervention such that the head remains generally fixed over a period of time. "

Eingorn appears to disclose a static link system which requires a manual loosening of a joint to permit the movement of one of the links. As discussed during the interview with the Examiner, it is the link system of claim 1 (having rigidly coupled constraints) which adapts over time to changes in the geometry of the head over time without manual intervention. Applicants have amended claim 1 to more distinctly point this feature out.

Applicants respectfully submit that Eingorn does not disclose, teach, or suggest a link system supporting rigidly coupled constraints wherein the link system "is ... configured to simultaneously adapt to changes in the geometry of the head **without manual intervention** such that the head remains generally fixed over a period of time." (emphasis added)

It was also discussed during the interview how such an amendment to claim 1 overcomes a potential combination of Eingorn with McFadden under the same rationale presented in the Office Action for claims 12-17, 19-22, and 25. The rationale presented by the Examiner for the combination of Eingorn and McFadden is that "it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the adjustment of the device to be automated, since it has been held that broadly providing a mechanical or automatic means to replace manual activity, which accomplishes the same result, involves only routine skill in the art." (Office Action, p. 5) The Examiner cites to *In re Venner*, 262 F.2d 262; 120 USPQ 192, for support of this rationale.

The application of such a rationale as a per se rule has been criticized by the Board of Patent Appeals and Interferences ("Board") as pointed out in *Ex Parte Brouillet*, 2001 WL 1339914, *2 (Bd. Pat. App. & Interferences). The Board in *Brouillet* distinguished *Venner*.

In the *Venner* decision the prior art collectively showed all of the limitations of the claim.¹ See also *Brouillet*, at *2 ("**In *Venner*, however, all limitations in the claims, including the automatic means, were disclosed in the applied references.**") (emphasis added)

In *Brouillet* the claim at issue recited "a pad having thereon an abrasive, acidic composition is affixed to a portable, power tool which is rotated at high speed until the glass surface is clean." *Id.* at *2. The applied references did "not mention power tools." *Id.* The

¹ "It was conceded by counsel for appellants at the hearing that the molding apparatus without the timing device and associated means to initiate the withdrawal of the middle core section after a predetermined period of time is not patentable over the prior art. Counsel further agrees that the power operated valve means for vertically withdrawing the middle core section when manually initiated is shown by the patents of record" *In re Venner*. at 757.

Examiner rejected the claim at issue by citing to *Venner*. The Board, distinguishing *Venner* in stating

In the present case, unlike in *Venner*, the examiner has not provided a reference which discloses a high speed rotary power tool, let alone one which is used for cleaning glass. The examiner has merely relied upon a per se rule that providing a mechanical or automatic means to replace manual activity which has accomplished the same result is unpatentable. As stated by the Federal Circuit in *In re Ochiai*, 71 F.3d 1565, 1572, 37 USPQ2d 1127, 1133 (Fed. Cir. 1995), **"reliance on per se rules of obviousness is legally incorrect and must cease."**

Id. (emphasis added)

In the current application, the two applied references Eingorn and McFadden, like the references relied on in *Brouillet* do not disclose all of the limitations of claim 1. Applicants submit that both Eingorn and McFadden disclose static link systems; a point on which the Examiner agrees. The Examiner states in the Office Action that "Eingorn/McFadden fail to disclose the device is automatically adapted to changes in the geometry of the head such that the head remains fixed over the period of time." (Office Action, p. 5)

The two references, Eingorn and McFadden, at least do not disclose, teach, or suggest a link system supporting rigidly coupled constraints wherein the link system "is ... configured to simultaneously adapt to changes in the geometry of the head **without manual intervention** such that the head remains generally fixed over a period of time." (emphasis added) For at least this reason, Applicants submit that amended claim 1 is patentable over the proposed combination of Eingorn and McFadden.

Should the Examiner disagree, Applicants respectfully request the Examiner explain how the facts of the present case fit the facts presented in the *Venner* decision. *See Ex Parte Scapellati*, 1997 WL 1883837 (Bd. Pat. App. & Interferences) ("[T]he Examiner does not shed any light on how the facts of this case fit those in *Venner*, and we also do not see how.")

Claims 3, 4, 8, 23, and 24 depend from independent claim 1 and are believed to be in condition for allowance at least for the reasons given above in connection with claim 1, and for the further limitations of claims 3, 4, 8, 23, and 24. Such action is respectfully requested.

The Examiner rejected claims 12-17, 19-22, and 25 under 35 U.S.C. 103(a) as being unpatentable over Eingorn in view of US Patent 6,179,846 to McFadden ("McFadden").

The rejected claims include independent claims 17 and 20 from which the remaining claims depend with the exception of claims 12-16.

Claims 12-16 depend from independent claim 1 and are believed to be in condition for allowance at least for the reasons given above in connection with claim 1, and for the further limitations of claims 12-16. Such action is respectfully requested.

Claim 17

Applicant submits that Eingorn, alone or in combination with McFadden, does not disclose, teach, or suggest the apparatus for limiting the movement of the head of a person of independent claim 17 comprising "a first link configured to support a first plurality of constraints coupled to the first link ... a second link configured to support a second plurality of constraints coupled to the second link ... a third link coupled to the first link at a first joint; a fourth link coupled to the second link at a second joint and coupled to the third link at a third joint; and a force applicer coupled to the third link and the fourth link, the force applicer configured to load each of the first plurality of constraints and each of the second plurality of constraints simultaneously such that each of the first plurality of constraints and each of the second plurality of constraints engages the head with generally the same amount force, wherein the first joint, the second joint, and the third joint permit the relative movement of the first link, the second link, the third link, and the fourth link over a period of time to automatically adapt to changes in the geometry of the head without manual intervention such that the head remains generally fixed over the period of time."

In the current application, the two applied references Eingorn and McFadden, like the references relied on in *Brouillet* do not disclose all of the limitations of amended claim 17. Applicants submit that both Eingorn and McFadden disclose static link systems; a point on which the Examiner agrees. The Examiner states in the Office Action that "Eingorn/McFadden fail to disclose the device is automatically adapted to changes in the geometry of the head such that the head remains fixed over the period of time." (Office Action, p. 5)

As recited in amended independent claim 17, "the first joint, the second joint, and the third joint permit the relative movement of the first link, the second link, the third link, and the fourth link over a period of time to automatically adapt to changes in the geometry of the head **without manual intervention** such that the head remains generally fixed over the period of time." As such, the claimed joints and links cooperate to adjust the relative positions of the claimed links to adapt to changes in the geometry of the head over time without manual intervention.

For at least these reasons, Applicant submits that amended independent claim 17 is in condition for allowance. Such action is respectfully requested.

Claim 19 depends from claim 17 and is believed to be in condition for allowance at least for the reasons given above in connection with claim 17, and for the further limitations of claim 19. Such action is respectfully requested.

Claim 20

Applicant submits that Eingorn, alone or in combination with McFadden, does not disclose, teach, or suggest the method of limiting the movement of a head of a person over time of independent claim 20 comprising the steps of "placing a first apparatus adjacent the head of the person, the apparatus including an adaptive link system which supports at least a first constraint and a second constraint located adjacent a first side of the head and a third constraint and a fourth constraint located adjacent a second side of the head; engaging each of the first, second, third, and fourth constraints with the head of the person with a force sufficient to limit the movement of the head of the person; and automatically adapting the adaptive link system to changes in the geometry of the head without manual intervention such that the head remains generally fixed over time."

In the current application, the two applied references Eingorn and McFadden, like the references relied on in *Brouillet* do not disclose all of the limitations of amended claim 17. Applicants submit that both Eingorn and McFadden disclose static link systems; a point on which the Examiner agrees. The Examiner states in the Office Action that "Eingorn/McFadden fail to disclose the device is automatically adapted to changes in the geometry of the head such that the head remains fixed over the period of time." (Office Action, p. 5)

As recited in amended independent claim 20, the method includes the step of "automatically adapting the adaptive link system to changes in the geometry of the head without manual intervention such that the head remains generally fixed over time." The term adaptive link system is defined in numbered paragraph [0052] of the specification as "a system of a plurality of links which is capable of automatically adapting to small changes in the geometry of head 10 once head restraint member 102 is applied to head 10 such that head 10 remains generally fixed relative to head restraint member 102." As such, the claimed adaptive link system adapts to changes in the geometry of the head over time without manual intervention.

For at least these reasons, Applicant submits that independent claim 20 is in condition for allowance. Such action is respectfully requested.

Claims 21 and 22 depend from claim 20 and are believed to be in condition for allowance at least for the reasons given above in connection with claim 20, and for the further limitations of claims 21 and 22. Such action is respectfully requested.

The Examiner rejected claim 18 under 35 U.S.C. 103(a) as being unpatentable over Eingorn in view of McFadden and US Patent 5,674,186 to Guigui et al ("Guigui").

Claim 18 depends from claim 17 and is believed to be in condition for allowance at least for the reasons given above in connection with claim 17, and for the further limitations of claim 18. Such action is respectfully requested.

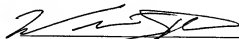
Final Remarks

Claims 1-25 are believed to be in condition for allowance. Such allowance is respectfully requested.

If necessary, please consider this a Petition for Extension of Time to effect a timely response. Please charge any additional fees or credits to the account of Baker & Daniels Deposit Account No. 02-0390.

In the event that there are any questions related to these amendments or to the application in general, the undersigned would appreciate the opportunity to address those questions directly in a telephone interview to expedite the prosecution of this application for all concerned.

Respectfully submitted,



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